

**REMARKS**

Claims 1-24 are pending in the application.

Claims 1-24 have been rejected.

Claims 1-24 remain pending in this application.

Reconsideration of the claims is respectfully requested.

**I. CLAIM REJECTIONS -- 35 U.S.C. § 103**

Claims 1-18 and 20-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0145979 to *Baj* (hereinafter “Baj”) in view of “SIP-based VoIP network and its interworking with the PSTN, Electronics & Communication Engineering Journal, Dec. 2002” to *Zhang* (hereinafter “Zhang”). The Applicants respectfully traverse the rejection.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Baj in view of Zhang, and further in view of U.S. Patent Publication No. 2002/0114317 to *Dorenbosch, et al.* (hereinafter “Dorenbosch”). The Applicants respectfully traverse the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142, p. 2100-133 (8<sup>th</sup> ed. rev. 4, October 2005). Absent such a prima facie case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

The Applicants respectfully submit that the cited references fail to teach or suggest all the claim limitations of Claim 1. Specifically, Claim 1 recites, "a test controller configured to receive a test call initiation message directed to the test controller from an originating terminal, to prompt the telecommunication device to allocate one of the voice paths within the telecommunication device for a test call based on the test call initiation message."

- The VoIP calls are not directed to the gatekeeper 14 of Baj. The gatekeeper 14 merely routes the calls.

The Office Action appears to suggest that the gatekeeper 14 of Baj reads on the claimed test controller and that the VoIP client 21 reads on the claimed originating terminal. However, as noted on the second line of Page 4 of the Office Action, the gatekeeper 14 of Baj routes incoming VoIP calls to a specified destination. Specifically, the VoIP calls are directed to destination phone 24. Paragraph [0039] of Baj, for example, states:

[0039] Referring to FIG. 3, a process 30 for testing voice quality of VoIP network 10 is shown. VoIP client 21 initially sends (31) a request to the destination

phone 24 to establish a transmission path between the VoIP client 21 and destination phone 24. The request is routed by gatekeeper 14 and forwarded by gateway 13 to destination phone 24.

Therefore, the VoIP calls are not directed to the gatekeeper 14. The gatekeeper 14 merely routes the calls. Having a gatekeeper route a call to a specified destination is not the same as receiving a test call initiation message directed to the gatekeeper.

- Baj does not disclose a test call origination message as recited in Claim 1.

Also, as noted at the beginning of the first full paragraph on Page 4 of the Office Action, Baj does not disclose a test call origination message as recited in Claim 1. The Office Action attempts to cure this deficiency by suggesting that it is obvious that the originator sends a message to the gatekeeper to originate the call. However, as established above, the gatekeeper 14 of Baj does not originate calls. The gatekeeper 14 only routes them to their specified destination. Accordingly, there would be no reason for the VoIP client 21 of Baj to send a test call origination message to the gatekeeper 14.

The Office Action also attempts to cure this deficiency by suggesting that the INVITE message of Fig. 5 of Zhang is a test call origination message. First, the INVITE message of Fig. 5 of Zhang is directed to Shirley, not to the SIP server. The SIP server forwards the INVITE message to Shirley. Second, the INVITE message is not a test call origination message. The INVITE message relates to an actual call from Dan to Shirley. Accordingly, Baj, alone or in combination with Zhang, does not disclose a test call origination message.

- The Applicants are unable to find any teaching or suggestion in Baj that the gateway 13b comprises a plurality of voice paths.

Furthermore, the Office Action appears to suggest that the gateway 13b of Baj reads upon the claimed telecommunication device. However, the Applicants are unable to find any teaching or suggestion in Baj that the gateway 13b comprises a plurality of voice paths. Therefore, it cannot be said that the gateway 13b of Baj allocates **one of the voice paths** for a test call when it does not have a plurality of voice paths.

Therefore, for all of the reasons established above, the Applicants respectfully submit that neither Baj nor Zhang, individually or in any combination thereof, teaches or suggests a test controller configured to receive a test call initiation message directed to the test controller from an originating terminal, to prompt the telecommunication device to allocate one of the voice paths within the telecommunication device for a test call based on the test call initiation message.

Independent Claims 9 and 20 recite limitations analogous to the novel limitations emphasized above in traversing the rejection of Claim 1 and, therefore, also are patentable over the cited references. Additionally, Claims 2-8, Claims 10-18 and Claims 21-24 depend from Claims 1, 9, and 20, respectively, and include all the limitations of their respective base claims. As such, Claims 2-8, 10-18, and 21-24 also are patentable over the cited references.

Accordingly, the Applicants respectfully request that the Examiner withdraw the § 103 rejection with respect to Claims 1-18 and 20-24.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Baj in view of Zhang, and further in view of U.S. Patent Publication No. 2002/0114317 to *Dorenbosch, et al.* (hereinafter “Dorenbosch”).

Claim 19 depends from Claim 9 and includes all the limitations of Claim 9. As such, Claim 19 also is patentable over the cited references.

**CONCLUSION**

As a result of the foregoing, the Applicants assert that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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